

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

HECTOR HERNANDEZ,
Appellant.

No. 2 CA-CR 2014-0061
Filed November 28, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20123554002
The Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

COUNSEL

Thomas C. Horne, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Amy M. Thorson, Assistant Attorney General, Tucson
Counsel for Appellee

Peter B. Keller, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 After a jury trial, Hector Hernandez was convicted of transportation of marijuana for sale, possession of marijuana for sale, and assisting a criminal syndicate. The trial court sentenced him to concurrent prison terms, the longest of which was 4.5 years. On appeal, Hernandez argues the trial court erred in denying his motion to suppress his post-arrest statements, contending those statements were involuntary because officers did not obtain a written waiver of his *Miranda*¹ rights. Finding no error, we affirm.

¶2 In reviewing the trial court's denial of a motion to suppress evidence, we consider only the evidence presented at the suppression hearing, and we view that evidence in the light most favorable to sustaining the court's ruling. *See State v. Kinney*, 225 Ariz. 550, ¶ 2, 241 P.3d 914, 917 (App. 2010). After his arrest, Hernandez was taken to an office of the Drug Enforcement Administration and placed in an interview room. He was advised of his rights pursuant to *Miranda* and agreed to speak with officers without counsel being present. Unlike two other suspects arrested with him, Hernandez was not presented with a waiver form addressing his *Miranda* rights.

¶3 Although we review the denial of a motion to suppress for an abuse of discretion, whether a defendant's statement was obtained in violation of *Miranda* is a legal conclusion that we review de novo. *See State v. Gay*, 214 Ariz. 214, ¶¶ 4, 30, 150 P.3d 787, 790,

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

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796 (App. 2007). Hernandez argues that, although the interrogating officers testified he had orally waived his rights before speaking to them, his waiver was involuntary because he did not sign a written waiver. But no such waiver is required. *See North Carolina v. Butler*, 441 U.S. 369, 373 (1979).

¶4 Hernandez also suggests the state did not meet its burden of demonstrating his waiver was voluntary because the officers did not record the interview. But he cites no authority, and we find none, concluding either that an officer's testimony is insufficient as a matter of law to support a finding of waiver or that such testimony must be distrusted merely because the officers failed to record the waiver. *Cf. State v. Sweeney*, 224 Ariz. 107, ¶ 12, 227 P.3d 868, 872 (App. 2010) (trial court in best position to evaluate witness credibility).

¶5 For the reasons stated, we affirm Hernandez's convictions and sentences.